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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Addendun.

ARUBA*

[15 November 2001]

* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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CONTENTS

		Page
Introduction		4
Article 1:	Right to self-determination	4
Article 2:	Non-discrimination	4
Article 3:	Equal rights of men and women	6
Article 4:	Restrictions on derogations from the obligations under the Covenant	6
Article 5:	Prohibition on narrow interpretation of the Covenant	6
Article 6:	Right to life	6
Article 7:	Prohibition of torture	7
Article 8:	Prohibition of slavery	8
Article 9:	Right to liberty and security of person	9
Article 10:	Treatment of persons deprived of their liberty	10
Article 11:	Prohibition of detention on account of the inability to fulfil a contractual obligation	10
Article 12:	Right to leave one's country	10
Article 13:	Prohibition of expulsion without legal guarantees	10
Article 14:	Entitlement to a free and public hearing	11
Article 15:	Principle of nulla poena sine praevia lege poenali	11
Article 16:	Right to the recognition as person before the law	11
Article 17:	Right to privacy	11
Article 18:	Freedom of religion and belief	14
Article 19:	Freedom of expression	15
Article 20:	Prohibition of war propaganda	15

CONTENTS (continued)

		Page
Article 21:	Right of assembly	15
Article 22:	Freedom of association	15
Article 23:	Protection of the family	15
Article 24:	Protection of the child	15
Article 25:	Right to take part in public affairs	18
Article 26:	Prohibition of discrimination	18
Article 27:	Minorities	18
Annex:	Table 7 Statistical Yearbook Aruba 1999 Relevant Laws	

Introduction

1. The present report is submitted in pursuance of article 40 of the International Covenant on Civil and Political Rights and in accordance with the guidelines on periodic reports adopted by the Human Rights Committee. This fifth periodic report covers the period from September 1996 to December 2000. Subjects dealt with in the previous reports that have remained unchanged during the period under review are not commented on.

Article 1: Right to self-determination

2. Reference is made to the previous reports.

Article 2: Non-discrimination

3. Since the National Ordinance on Administrative Procedure (LAR) (AB 1993 No. 45) came into force in December 1997, frequent use has been made of this form of redress both by nationals of Aruba and by aliens. Evidence that many aliens seek review is provided by the number of cases relating to the National Ordinance on Admission and Deportation.

4. The annual reports of the Committee on the Administrative Procedure Ordinance for 1998 and 1999 give the following figures:

Table 1

Review proceedings	1998	1999	Total
Number of cases not concerned with admission or deportation	13	38	51
Number of admission/deportation cases	85	76	161
Total number of cases	98	114	212

Source: 1998 and 1999 Annual Reports of the Committee on the Administrative Procedure Ordinance.

Medium of instruction in schools

5. Dutch is the medium of instruction in the schools. Papiamento is the mother tongue of most of the pupils, and is also spoken by them at home. Only 5.8 per cent of primary schoolchildren speak Dutch at home. Owing to the large number of foreign workers Aruba is a multicultural and multilingual society in which English and Spanish are the most commonly spoken languages, in addition to Papiamento.

6. The previous Kingdom Report mentioned that little progress had yet been made in introducing Papiamento as a medium of instruction in the schools. This has now changed. The projects to restructure the Aruban educational system devote much attention to the role of Papiamento in education.

7. The "Proyecto Inovacion Enseñansa Preparatorio y Enseñansa Basico" (PRIEPEB) (Nursery and Primary Education Innovation Project) started in 1995. The aim of this project is to encourage, organize and coordinate innovation in nursery and primary education. The project has resulted in the publication of a report entitled "Un bon enseñansa; condicion pa futuro, Plan Strategico PRIEPEB 1999-2008" (Good education: essential for the future; 1999-2008 PRIEPEB Strategic Plan). The plan describes the proposals for restructuring and improving nursery and primary education over a 10-year period. It also addresses the subject of the medium of instruction in nursery and primary schools.

8. PRIEPEB proposes that two languages should be used in primary schools in the near future. Papiamento is the national language and should therefore be the principal medium of instruction. This is necessary in order to ensure that children understand what they are being taught and also to promote strong personal development and cultural identity. Dutch should be the second medium of instruction, since it will continue to be used in secondary education for the time being. At the end of primary school, children should have a sufficient grasp of Dutch to be able to understand the lessons in secondary school. Another reason for having two mediums of instruction in the future is that Papiamento is spoken only in Aruba and the Netherlands Antilles and children must therefore have a basic knowledge of other languages too.

9. As already mentioned, Dutch is to be retained for the time being as the medium of instruction in secondary education. This is the conclusion drawn by the General Secondary Education Restructuring Steering Group (SHA) in its report entitled "Na Caminda Pa Restructuracion di nos Enseñansa Secundario General" (Towards a restructuring of our general secondary education). Papiamento will be given its own place in the new general secondary education system, doing justice to its role as the national language and medium of expression for the country's cultural heritage and distinctive identity. The systematic use of Papiamento will help its development, and a knowledge of its structure will assist children in learning foreign languages.

National Ordinance on Official Languages

10. The draft National Ordinance on Official Languages, to which reference was made in the previous report, has recently been considered by the Advisory Council of Aruba. For information about the background to an aim of this draft ordinance, reference should be made to the previous Kingdom Report.

Article 3: Equal rights of men and women

11. Further to the previous report, it should be noted that Book 1 of the New Civil Code governing the law of persons and family law is presently before the Aruban Parliament. Book 1 contains provisions on equal rights for men and women. For further details of the New Civil Code, reference should be made to the section on articles 1-3 and 15 in the second and third CEDAW reports.

12. For information about the participation of women in political and economic life reference should be made to the sections on articles 7, 10 and 11 in the third CEDAW report.

Article 4: Restrictions on derogations from the obligations under the Covenant

13. As a result of the amendment to the Disaster Ordinance in 1996, an official body (the Disaster Management Bureau) has been set up to record information on measures to restrict and combat disasters and to assist the government minister concerned.

14. No state of emergency was proclaimed during the period 1997-1999/2000.

Article 5: Prohibition on narrow interpretation of the Covenant

15. Reference is made to the previous reports.

Article 6: Right to life

16. Further to the previous report, it should be noted that the New Code of Criminal Procedure, which strengthens the position of the injured party, came into effect on 1 October 1997. For further information, reference should be made to article 13 of the third supplementary CAT report.

17. As regards the help given to female victims of violence by the "Fundashon Pa Hende Muher den Dificultad" (Foundation for Women in Distress) (FHMD), reference is made to article 5 of the third periodic CEDAW report.

18. As regards the quality of life, mention should be made of the creation of the National Park of Aruba, which started in 1997. This park covers 17 per cent of the territory of Aruba and has been established to protect the extraordinary landscape and natural environment against negative influences and preserve the area for future generations. The protection and preservation of nature, the preservation of cultural history and education are important objectives of the park.

19. Aruba is also a signatory to several environmental conventions and protocols, including the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and

Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, and the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and to the the Protocols to this Convention, e.g. the Protocol concerning Specially Protected Areas and Wildlife.

20. With regard to the measures adopted to reduce the threat of war, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction entered into force for Aruba on 29 April 1997.

21. In order to update the previous report, the following statistical information can be provided with regard to general comment 6 (16).

22. Raw Mortality rate, 1994-1998: reference is made to the section on article 12 in Aruba's third periodic CEDAW report.

Infant mortality rate (per 1,000 live births)

1996	2.1
1997	7.5
1998	3.0

Source: Department of Public Health.

23. Reference is also made to table 7 of the 1999 Statistical Yearbook on the Life Expectancy of the Population by Age and Sex, 1991 (see Annex).

Article 7: Prohibition of torture

24. For the sake of brevity, reference should be made to what is said about the prohibition of torture in the third supplementary CAT report, in particular as regards articles 2 and 4 of that Convention. The third supplementary report also referred to the draft National Ordinance to implement the Torture Convention, which came into effect on 22 June 1999 (see National Ordinance to implement the Torture Convention, AB 1999 No. 8).

25. A subject explicitly covered during the training of investigating officials is the significance of human rights in relation to their work. Human rights define the standard of conduct to be observed by them in the course of their duties on Aruba. This standard applies both directly (through case law) and indirectly (the spirit of the provisions). Under article 4, paragraph 2 (b), of the Interim Decree on Special Investigating Officials (AB 2000, 94) human rights are a standard part of the training curriculum. Article 8, paragraph 2, of the same Decree provides that human rights should also be a standard part of the examination syllabus.

26. As regards the provisions governing the right of citizens to complain about illegal police acts, reference should be made to the previous report. A draft of a new complaints scheme has been submitted to the Aruba Police Force for their opinion.

27. As mentioned in the previous report, the Mental Health Ordinance provides that psychiatric institutions and their treatment of patients should be supervised by the Director of the Public Health Department and the Attorney-General (art. 6 of the Mental Health Ordinance). The patients of such institutions do not yet have a special right of complaint. The Government recently instituted a commission to prepare a revision of the outdated Mental Health Ordinance. One of the subjects that will receive explicit attention in this review is the legal protection of persons admitted to psychiatric institutions.

28. There are no special provisions under Aruban law that prohibit medical experiments on human beings. However, such experiments would never be permitted under the Constitution of Aruba, in particular the right to inviolability of the person (art 1.3 of the Constitution). According to the system underlying the Constitution, it would be first necessary to have an express statutory basis indicating what is permissible and what is not. For the time being there are no plans to create such a basis.

Article 8: Prohibition of slavery

29. Slavery as defined in the Manual does not exist in Aruba, nor for that matter does servitude or forced labour. A wide range of legislation on work and pay provides safeguards for employees. Important items of legislation in this field include the Employment Ordinance (AB 1990 No. GT 57) and the National Minimum Wage Ordinance (AB 1989 No. GT 26). It should also be noted that trade unions are recognized in Aruba and represent the workers in the dealings with employers, including the Government.

30. Aruba is flourishing economically and has a great attraction for the people in nearby countries such as Colombia, Venezuela and other Caribbean islands. Aruba does, however, face a major problem in the form of illegal immigrants. Owing to their illegal status these people may have to accept a position of undesirable economic dependency in order to make a living or are in any event exposed to the real risk of ending up in this position. Although Aruba does, in principle, have sufficient legislation to combat the unhealthy situations that may arise as a result, the problem of illegal residence is a fact and has therefore continuous attention of the Government.

31. Under the National Ordinance on Admission and Deportation (AB 1993 No. GT 33) an alien wishing to reside in Aruba for more than three months is required to have a residence permit for a fixed or indefinite period. Such a permit is normally conditional on the holder having a job and actually performing the work described in the permit. An alien who performs work other than that described in the permit (i.e. illegal work) may ultimately be deported. In such a case, the employer of the illegal worker too is guilty of a criminal offence.

32. Under article 260 of the Criminal Code of Aruba trafficking in women is a criminal offence, as is trafficking in minors of the male sex. The maximum sentence in both cases is five years' imprisonment. A fine may be imposed for this offence only if the court would otherwise impose a term of imprisonment not exceeding three months (art. 28 of the Code). In this connection, see also the section on article 6 in the third supplementary CEDAW report.

33. Further to the third CCPR report, it should be noted that a prisoner is obliged under article 17 of the Criminal Code to do work assigned to him by the prison authorities in accordance with the rules of the Prisons Ordinance (published in the Official Bulletin of the Netherlands Antilles, 1930, No. 73). The underlying premise of this ordinance, namely that prisoners should always work (although it proves difficult in practice to provide work for all the prisoners in the existing prison), is also found in the draft National Ordinance on the Execution of Custodial Sentences. However, a training course is accepted as an alternative to work. As mentioned in the previous report, this draft ordinance regulates the legal position of all persons in custody, with the exception of those detained in police custody or admitted to a psychiatric institution. The draft ordinance is currently being studied for the second time by the Advisory Council of Aruba.

Article 9: Right to liberty and security of person

34. Reference may be made in respect of this article to the sections on "Prosecution" and "Detention" in the third CAT report. Reference is also made in this connection to the sections on articles 11 and 15 in the third supplementary CAT report.

35. Further to the previous report, it should be noted that the lawfulness of the pre-trial detention is periodically assessed by the courts. As a rule, pre-trial detention may not exceed 116 days. This period lasts for 30 days longer in the case of a preliminary judicial investigation. At the end of this period the trial proceedings should start. For more detailed information on this point see the section on "constraints involving deprivation of liberty" in the section on article 6 in the third CAT report.

36. Pre-trial detention is not applied automatically under the criminal law of Aruba. In fact, it may be applied only in cases involving relatively serious offences where there is a demonstrable reason for such detention. The offences for which pre-trial detention may be granted must in any event carry a sentence of four years' imprisonment or more under the Criminal Code or specific criminal law provisions, except in cases where the defendant is not permanently resident in Aruba. In that case, however, the offence must carry a sentence of imprisonment of some form (see article 100 of the Code of Criminal Procedure of Aruba). If pre-trial detention is to be applied, one of the following reasons must always exist (the list is exhaustive): (1) danger that the suspect may commit further offences; (2) danger that the suspect may abscond; (3) need to establish the truth; (4) the offence constitutes a "grave violation of the legal order"; (5) the offence carries a sentence of six years' imprisonment or more. There must always be clear indications that the suspect had something to do with the offence. In this connection, see also the section on article 6 in the third CAT report.

Article 10: Treatment of persons deprived of their liberty

37. As regards the requirement in paragraph 3 of this article that juvenile offenders should be segregated from adults, it should be noted that Aruban legislation does provide for special treatment of juvenile offenders. First of all, both the Criminal Code (AB 1991 No. GT 50) and the Code of Criminal Procedure have separate provisions dealing with juvenile offenders.

For example, articles 41-41m of the Criminal Code provide for sentences that take account of the need to protect juvenile offenders from the harmful consequences of the sanctions. Generally, juvenile offenders receive sentences designed to ensure that they receive an education.

38. Since the existing provisions of the Criminal Code are relatively old, the Government of Aruba has decided to modernize the system of juvenile sentences. This has now resulted in the preparation of a new system of sentences. The bill to introduce the new system is expected to be laid before Parliament next year. Under the new system, ensuring that juvenile offenders receive an education will remain one of the main aims of their treatment. However, the new sanctions are aimed less at protecting the education of juveniles and more at compensating for the educational deficits that led to the criminal behaviour in the first place. This can be achieved by means of a broad range of alternative sanctions that differ from those presently available.

39. The new Aruban Code of Criminal Procedure (AB 1996 No. 75) also contains specific provisions on the trial of juvenile offenders. The main aim of these provisions is to reduce the personal and social damage suffered by juvenile offenders as the result of a trial.

40. As already mentioned, the new draft legislation on the execution of custodial sentences is being reviewed for the second time by the Advisory Council of Aruba. It is not possible at present, however, to predict when this bill will be passed by Parliament. The bill provides for special treatment of juvenile prisoners. Segregation from adult prisoners is imperative, and educational measures should replace prison labour as much as possible during the period when the prison sentence is served.

41. The construction of a new wing of Aruba Prison (KIA) for young offenders was proposed in the 1998 KIA project file. Under these plans, the present wing would then be used only for remand prisoners. Although the new facility has not yet been built, it has a high priority. The plans have already been submitted to the "Fondo Desaroyo di Aruba" (Aruban Development Fund) and work can start as soon as a decision has been taken on them.

Article 11: Prohibition of detention on account of the inability to fulfil a contractual obligation

42. Reference is made to the previous reports.

Article 12: Right to leave one's country

43. Reference is made to the previous reports.

Article 13: Prohibition of expulsion without legal guarantees

44. Aliens have also obtained better legal protection in Aruba since the National Ordinance on Administrative Procedure came into effect on 1 December 1997.

45. As regards the procedure under the Ordinance, reference should be made to the section on article 6 in the thirteenth CERD report. However, one correction should be made: if an individual does not agree with the decision of an administrative authority he may at first

instance file a notice of objection with the authority responsible for the decision and not, as stated in the section on the above-mentioned article, with an independent committee. The administrative body that took the disputed decision must then ascertain whether there are grounds for revising it. If this is not the case, the notice of objection is forwarded to the advi commission, after which the procedure described in the section on the above-mentioned artic followed. Where judicial review is sought the court acts as the court of last instance. There right of appeal to a higher court.

46. It should also be noted that the filing of a notice of objection does not suspend the eff of the decision. As the objection procedure can take some months, an alien runs the risk of b deported in the meantime. To avoid this, he may apply to the court for an interim measure suspending the execution of the decision. The National Ordinance on Admission and Deportation gives the Minister of Justice the power to detain for the purpose of deportation aliens whose residence permit has expired for some reason. This power is exercised where t is in the interests of public policy, or public order or safety, or if there is good reason to fear the alien will try to evade deportation. An alien may also file a notice of objection against hi detention for the purpose of deportation and request an interim measure.

47. Reference is made in this connection to the section on article 15 in the third CEDAW report.

Article 14: Entitlement to a free and public hearing

48. Reference is made to the previous reports.

Article 15: Principle of nulla poena sine praevia lege poenali

49. Reference is made to the previous reports.

Article 16: Right to the recognition as person before the law

50. Reference is made to the previous report. Article 3 of the existing Civil Code, which regulates the recognition of persons before the law, is incorporated in its entirety (save for a changes to the wording) in the New Civil Code of Aruba, which has been presented for consideration to the Aruban Parliament.

Article 17: Right to privacy

51. As mentioned in the previous reports, the various aspects of the right to privacy, as contained in article 17 of the Covenant, are dealt with in different articles of the Constitution Aruba. In addition to the previous report the following information may be provided.

52. First of all, the right to respect for privacy is protected as a fundamental right in article 1.16 of the Constitution. The notes on this article in the explanatory memorandum to Constitution of Aruba show that the legislator has interpreted the concept of privacy more w than the classical definition of this term, in other words the right to move around freely and be spied upon in one's own home and family. The notes on article 1.16 state explicitly that

privacy should be taken to mean all the different situations in which a person can reasonably expect to be able to act uninhibitedly, but which cannot by their very nature be listed exhaustively. The explanatory memorandum states, however, that examples of infringements of this right include entering a person's home without permission, monitoring a person's habits, compelling a person to undergo a medical examination and violating the physical and moral integrity of a person. The limits of the right to privacy differ from case to case, depending on the form which the right takes (in some cases any infringement would be unacceptable whereas in others merely the use to which the information is put, for example the recording of observations, would be impermissible etc.).

53. One result of the wording of article 1.16 is that personal data recorded in Aruba may not be disclosed to persons or bodies other than those that registered the data, unless provision has been made for this by a specific ordinance. This prohibition is also expressly incorporated in many other items of legislation, since all national ordinances governing the collection of personal data on Aruban citizens include a provision regulating the duty of confidentiality. This duty means that data may be used and disseminated only for the purposes defined in the relevant regulation.

54. It was mentioned in the previous reports that a start had been made on the drafting of a national ordinance containing rules for the protection of recorded personal data, based on article 1.16 of the Constitution. This ordinance will also regulate consultation and use of such data, and its rectification by the data subject. The work in this field has not yet resulted in a final, comprehensive regulation to protect personal data and records.

55. A number of ordinances take account of article 1.16 by providing for the possibility in specific cases that personal data may be gathered, analysed and - subject to certain conditions - disclosed. Examples include criminal law legislation, tax legislation and social security legislation, as well as a number of specific ordinances.

56. As far as the last point is concerned it should be noted first of all that under the National Ordinance on the Establishment and Maintenance of the Population Register (AB 1989 No. GT 17) and the Decree on the Population Register (AB 1990 No. GT 41) the Civil Registry and Population Register Section is responsible for recording and updating personal data.

57. Overhaul of the system of personal data processing (PIVA) played a crucial role in the public administration review procedure initiated by the Governments of Aruba and the Netherlands Antilles in 1995. For the purpose of this overhaul the PIVA programme was established as the result of a joint initiative by Aruba, the island territories of the Netherlands Antilles, and the Netherlands. The aim of the PIVA programme is to design, develop and introduce new and efficient population information systems for Aruba and the island territories of the Netherlands Antilles. These systems should allow the effective exchange of personal data within and between the countries and islands, in accordance with the statutory framework to be established as part of the programme.

58. Another example is the National Ordinance on Customer Identification in the case of Financial Services (AB 1985 No. 86), under which financial service providers (i.e. everyone who provides certain financial services) are obliged to check the identity of their customers and keep the information for a period of at least five years. Such data may then be communicated to other government bodies if they possess the statutory power to demand the provision of such data (e.g. the judicial authorities in the case of a criminal investigation). In addition, all kinds of personal data may be gathered under the National Ordinance on the Obligation to Report Unusual Transactions (AB 1995 No. 85).

59. Besides article 1.16 the Constitution of Aruba defines a number of other fundamental rights connected with the right to privacy, including the right to protection from interference with the home and correspondence (as mentioned in article 17 of the Covenant). For example, article 1.17 of the Constitution protects citizens from arbitrary entry into a dwelling without the express consent of the occupant. As already mentioned in the third ICCPR report, such entry is possible under this article only in cases provided for by national ordinance and with the consent of a judicial authority (art. 1.17, para. 1). It should also be noted that entry in other cases will always constitute a criminal offence, for example under article 144 of the Criminal Code. This provision is implemented elsewhere, for example in the Code of Criminal Procedure: articles 155-163 list a large number of conditions that must be fulfilled if a dwelling is to be entered against the will of the occupant (judicial authorization, production of identification, reporting, etc.). It should, incidentally, be noted that article 162 also contains a number of conditions that must be fulfilled if a dwelling is to be entered with the consent of an occupant.

60. Article 1.17 is also implemented in various specific ordinances, which provide that a dwelling may be entered by the administrative authorities without the express consent of an occupant for the purpose of exercising regulatory control (i.e. checking compliance with certain legislation).

61. Article 1.18 of the Constitution guarantees the right to privacy on correspondence. An exception to this can be made only in cases provided for by national ordinance. Further to the previous report it should be noted that the Code of Criminal Procedure also provides for the possibility of limiting this right for the purpose of investigating and prosecuting criminal offences. However, articles 127, 128, 133 (2), 134 and 135 of this Code specify a number of conditions designed to guarantee that any limitation of the right is properly authorized and never goes further than is strictly necessary for the purposes or the investigation or prosecution. In addition, the National Ordinance on the Obligation to Report regarding the Import and Export of Cash (AB 2000 No. 27) provides for the possibility of intercepting and opening letters, but this may be done only if there is a reasonable suspicion that large quantities of cash are being imported or exported in these letters without the obligatory reporting to the authorities (art. 4, para. 2 (b) of the Ordinance). Judicial leave is still required in order to open these letters (art. 5, para. 2).

62. As a result of the general commentary 16 (32) No. 11, it is necessary to consider the question of the extent to which the honour and reputation of individuals is protected by law. The answer in this case is that this protection is regulated in articles 273-284a of the Criminal Code

of Aruba. Where the honour or reputation of an individual is violated and the attack is publicized, this constitutes the offence of slander. Defamation in the form of either written material or images that are disseminated or openly displayed is a criminal offence.

63. The rules governing searches of the person and the application of coercive measures against individuals are relevant to the physical component of the right to privacy. Provisions on this subject are contained in various items of Aruban legislation.

64. The first provision of relevance is article 78 of the Code of Criminal Procedure, which regulates strip searches and searches of clothing in the course of a criminal investigation. The basic premise is that the body or clothing of a suspect may be searched only in cases where there are reasonably concrete indications that the person concerned has committed the offence of which he is suspected (mere suspicion is insufficient). In addition, a search may be carried out in the interests of the investigation during the pre-trial detention of a suspect (art. 90, para. 2 (m) and (n), and arts. 94 and 99 of the Code of Criminal Procedure). A strip search is always taken to mean only external examination of the body.

65. Second, DNA testing is possible under article 79a of the Code of Criminal Procedure. This is done by taking a DNA sample from the body of a suspect. Under article 79 such testing is possible if there is a suspicion of an offence for which pre-trial detention is possible (generally offences that carry a sentence of four years' imprisonment or more). The Code permits the DNA data to be stored in database and also to be used in later investigations where there is no known suspect and it is desired to check the involvement of persons whose DNA material is already stored in the database.

66. Finally, it should be pointed out that officials who have regulatory powers (but no powers of investigation) usually have general powers of supervision that may have a bearing on the individual's right to respect to privacy. These powers are always regulated by national ordinance, but the rules governing their use are contained in the National Decree on General Provisions for the Exercise of Regulatory Powers (AB 1998 No. 70). The powers include requesting information, inspecting documents and computerized databases, entering premises and (occasionally) entering dwellings without the express consent of the occupant, and inspecting vehicles and their contents.

Article 18: Freedom of religion and belief

67. Further to the previous report, it should be noted that religion may be dealt with in the course of lessons on social studies in publicly-run schools. Similarly, the different religions may be discussed in the course of lessons on personal and social development in publicly-run secondary vocational schools. The core values taught in secondary vocational education are professionalism and personality. These aspects occur in all subject and also have links with religion. A subject known as "knowledge of spiritual life" is taught on the publicly-run teacher training course. Owing to the shortage of religious instruction teachers in primary education, students attending the Aruban Teacher Training Institute (IPA) are required to take three modules that prepare them for teaching Christian religion in an active and committed way to the pupils of the Catholic and Protestant schools.

Article 19: Freedom of expression

68. With regard to the right to seek and receive information, it should be noted that the National Ordinance on Public Access to Government Information came into effect on 15 November 1999. Under this ordinance individuals may request the authorities for information and the authorities are obliged to provide it unless this would be seriously prejudicial to the national interest.

Article 20: Prohibition of war propaganda

69. Reference is made to the previous reports.

Article 21: Right of assembly

70. Reference is made to the previous reports.

Article 22: Freedom of association

71. Reference is made to the previous reports.

Article 23: Protection of the family

72. Reference is made to the sections on articles 1-3 in the second and third supplementary CEDAW reports which deal with the New Civil Code.

Article 24: Protection of the child

73. The following information can be provided to supplement the previous report.

Rights of the child

74. Before being able to ratify the Convention on the Rights of the Child, Aruba must comply with a number of additional obligations. These concern in particular the introduction of compulsory education and implementation of an integrated youth policy plan. A draft Ordinance on Compulsory Education is currently under consideration by the Advisory Council. To reflect the fundamental right of every child to receive education the draft ordinance will provide that parents/carers are obliged to enrol a child in their custody or actual care at a school and to ensure that the child actually attends the school. In certain special circumstances described in the draft ordinance parents may be relieved of these obligations. When an obligation is imposed by law it is advisable to monitor its observance and take action in the event of non-observance. However, the checks to ensure that children attend school, which will be carried out by one or more officials specially designated for this purpose, will put the emphasis not on penalties under the criminal law (or threats of such penalties) but on the provision of information and measure to persuade parents to comply with their obligations. Nonetheless, it may be necessary to employ more rigorous measures in the last resort. This is why the draft Ordinance on Compulsory

Education introduces the possibility of imposing a penalty payment for failure to comply. In this case, it has been decided that the "big stick" should be an administrative rather than a criminal law sanction since the aim is not to punish offences but to encourage compliance.

75. As already mentioned, an integrated youth policy plan has been drawn up on the instructions of the relevant government minister. Although the policy plan has not yet been implemented, the authorities and non-governmental organizations are working on parts of the plan, in particular the following areas and problems:

Childcare

76. As mentioned in the previous report, the authorities propose introducing a law fixing the quality of childcare by the introduction of a system of licences. Preparations in this field are at an advanced stage. At present the final touches are being put to the draft ordinance to amend the National Ordinance on Childcare Centres approved by the Parliament of Aruba and a draft decree specifying quality criteria for childcare. The drafts will shortly be presented to the cabinet for approval.

Helpline for children and young people

77. A helpline organization for children and young people in Aruba was established on 29 April 1999. The aim is to provide a service that children and young people can approach easily and anonymously to obtain information and advice. If necessary, they will be referred to existing youth counselling institutions. On the basis of the most common questions and problems, the helpline organization also organizes information activities and theme afternoons with and for schools and institutions involved in youth care. Another of its functions is to identify problems and thus help to improve the quality of youth care and develop youth policy.

Child sex abuse

78. A report on child sex abuse drawn up by a group of collaborating institutions that deal with the sexual abuse, ill-treatment and neglect of children was presented to the Cabinet on 10 December 1999. The report contains a series of proposals designed to achieve a comprehensive approach to combating the problem of sexual abuse and improving the standard of care. The Cabinet has now decided to establish a committee on this subject, to draw up more detailed proposals on some of the points contained in the report and calculate the financial consequences of implementing the proposals. The committee started work in September 2000 and is expected to complete its activities in January 2001. As mentioned in the previous report, the authorities have already appointed a committee to draw up a plan for the establishment of a child abuse medical advice centre at the Public Health Directorate, which is one of the recommendations in the above-mentioned report.

Teenage pregnancy

79. On 20 June 2000 the working group on teenage pregnancy started discussing the results of the survey of sex education and the provision of care for young mothers/parents carried out on behalf of the ATHA, the umbrella body for non-governmental youth care organizations. The survey results will be used to draft a plan of action that adopts an integrated approach to this problem.

Non-schoolgoing children

80. In May 2000 the Minister of Education and Employment established a steering group to prepare a survey of the problems of "non-schoolgoing children". The steering group is assisted by a focus group consisting of representatives of government and non-governmental organizations that deal with this problem. The purpose of the survey is to ascertain the size and characteristics of the target group, make recommendations for a comprehensive approach to the problem, and identify the institutions that could assist in this.

81. To ascertain the number of children who do not attend school, a campaign to encourage children to attend school - "Accion Ban Scol" (Go to School Campaign) was held in November 2000. This involved registered non-schoolgoing children at various places in Aruba and collecting relevant data on the basis of a questionnaire in order to serve as a basis for policy in the coming years. The findings of the survey are expected to be presented to the Minister of Education and Employment in early 2001, following a symposium on the subject in January 2001.

82. Non-governmental organizations, namely CEDE-Aruba, the Aruba Bilingual Education Foundation and the community centres, have devised a plan to establish an educational programme for non-schoolgoing children and migrant children in the community centres. To this end they have set up a foundation known as I.D.E.A. "Initiativa Desaroyo Education Aruba" (Education Development Initiative Aruba), which has instituted a programme of this kind in the Lago Heights community centre. This is on the same lines as Servol in Trinidad. Other community centres in Aruba will shortly follow suit.

83. Special mention should be made in this connection of the establishment of a special education centre where young people who have serious behavioural problems and have or are likely to come into contact with the police can be looked after and treated. This type of facility is not at present available on Aruba. A proposal for this was made on behalf of the Minister of Justice as long ago as 1996.

Residential care

84. In order to improve the standard of residential care, the cabinet commissioned a firm of consultants on 14 February 2000 to carry out a survey of the care provided by non-governmental organizations such as the Casa Cuna, Imeldahof and Cas pa Hubentud

children's homes and the corresponding establishments within the public sector. The project is aimed at a better coordination of the work and services provided by these organizations in order to achieve a more efficient budget allocation by the Government. The survey report was presented to the Cabinet in mid-July 2000 and a committee has now been appointed to draft and implement measures based on the survey findings.

Article 25: Right to take part in public affairs

85. Reference is made to the previous reports.

Article 26: Prohibition of discrimination

86. Reference is made to the previous reports and the section on article 15 in the second and third CEDAW reports, which referred to the principle of equality before the law. The majority of cases relating to pay differentials have involved the distinction between married and single people. Usually, the courts have held that the differentials were unjustified. These cases (the majority of which were heard by the civil service tribunal) have therefore resulted in a review of various statutory schemes for civil service personnel in order to incorporate the principle of equal status. Although the various labour surveys (the most recent in 1997) have revealed that pay differentials do exist between men and women in the private sector, there have been no legal cases on this subject in practice.

87. Litigants have invoked the principle of equality in the following cases. The husband of a woman who had been officially allowed to enter and reside in Aruba was barred from seeking employment. He applied for the prohibition to be lifted, invoking the principle of equality and citing the case of a person in the same situation as him for whom the prohibition had been lifted. The court held that the application was well-founded since there had been a violation of the principle of equality before the law.

88. The wife of a Dutch national who had been officially allowed to enter and reside in Aruba claimed that she was entitled to a residence permit that did not contain the condition that she could not work without a work permit. She applied to the courts for a review of the decision that her notice of objection was not admissible. She contended that if she had been married to a Dutch national who had been born in Aruba, aliens law would not have been applicable to her. She considered this distinction to be discriminatory. The Court of First Instance held in its judgement of 17 June 1999 (LAR 31/99) that the distinction between the spouse of a person born in Aruba and the spouse of a person granted entry to Aruba was not discriminatory.

89. As regards General Comment 18 (37), section 8, concerning the requirement that young offenders be segregated from adults, reference is made to the section on article 10 in this report.

Article 27: Minorities

90. Reference is made to the previous reports.

7. Life expectancy of the population by age and sex, 1991

Age	Male	Female
At birth	71.10	77.12
1	70.87	76.68
5	67.05	72.80
10	62.41	67.99
15	57.46	63.02
20	52.56	58.06
25	47.78	53.18
30	43.25	48.36
35	38.50	43.42
40	33.99	38.68
45	29.69	33.88
50	25.25	29.40
55	21.41	24.61
60	17.43	20.43
65	13.73	16.60
70	10.41	12.24
75	7.98	8.91
80	6.03	5.99
85	4.56	2.63

Source: Population Census 1991 and Registry Office.

Code of Criminal Procedure

Part Three

Cases in which pre-trial detention is permissible

Article 100

1. An order for pre-trial detention may be issued where a person is suspected of:

(a) A serious offence carrying a prison sentence of four years or more, or

(b) One of the offences defined in articles 204, paragraphs 1 and 2, 236, 245, paragraph 3, 259, 266, 298, paragraph 1, 321a, 334, 339, 339a, 366, paragraph 1, 368, 404, 405, 410 and 431 of the Criminal Code.

2. Such an order may also be issued if the suspect has no fixed abode or place of residence in Aruba and is suspected of having committed a serious offence which carries a prison sentence.

Official bulletin of Aruba

National Ordinance of 26 March 1999 in connection with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (National Ordinance implementing the Convention against Torture).

Published 21 June 1999

J.H.A. Eman
Interim Minister of Justice
and Public Works

IN THE NAME OF THE QUEEN!

THE GOVERNOR OF ARUBA

Whereas:

It is necessary to make certain provisions under the criminal law in connection with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Degrading Treatment or Punishment adopted in New York on 10 December 1984 (Treaty Series 1985, 69);

Has, after hearing the Advisory Council and after consultation with Parliament, adopted the following national ordinance:

Article 1

1. If a public official, acting in the course of his duties, assaults a person who has been deprived of his liberty with a view to obtaining information or a confession, punishing him, or instilling fear into him or coercing him into doing or acquiescing in something, or out of contempt for his human dignity, such acts shall, if they are capable of promoting their intended aim, be construed as torture and carry a term of imprisonment not exceeding fifteen years.

2. Intentionally instilling great fear or causing another form of serious mental anguish shall be equated with assault.

3. If the offence results in death, the perpetrator shall be sentenced to life imprisonment or to a determinate sentence not exceeding twenty years.

Article 2

The following persons shall be liable to the same sentences as those specified for the offences referred to in the previous article:

(a) A public official who, by one of the means referred to in article 49, paragraph 1 (b), of the Criminal Code of Aruba (AB 1991 No. GT 50), incites another person to commit the form of assault referred to in article 1 or intentionally permits another person to commit this form of assault;

(b) A person who commits the form of assault referred to in article 1, if a public official, in the course of his duties, has, by one of the means referred to in article 49, paragraph 1 (b) of the Criminal Code of Aruba, incited this person to commit the offence or intentionally permitted it.

Article 3

Articles 44 and 45 of the Criminal Code of Aruba shall not apply to the offences referred to in articles 1 and 2.

Article 4

The offences made punishable in articles 1 and 2 are serious offences.

Article 5

The criminal law of Aruba is applicable to anyone who commits one of the serious offences described in articles 1 and 2 of this national ordinance outside Aruba.

Article 6

1. This national ordinance shall take effect on the day after its publication in the Official Bulletin of Aruba.

2. This national ordinance may be cited as the National Ordinance implementing the Convention against Torture.

Issued at Oranjestad, 26 May 1999

O. Koolman

J.H.A. Eman
Interim Minister of Justice and
Public Works